IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5597 OF 2005

Punamiya Plastics Pvt.Ltd. ...Petitioner.
Vs.
H. Chokshi & Co. Pvt.Ltd. ...Respondent.
....
Mr. M.S. Bhandari with Suman Jain for the Petitioner.
Mr. Satish Kumar for the Respondent.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 21, 2006.

P.C.

The Respondent instituted Special Civil Suit No.180 of 1984 before the Civil Judge, Senior Division, Thane, against the Bank of Madura which is the First Defendant. The other Defendants to the suit included the proprietor of Sandeep Plastics Pvt. Ltd., Rupchand Tarachand & Co., Vijay Apparels and the Court Receiver of the High Court. The suit was decreed and a decree for possession was passed therein. An appeal preferred by Defendant Nos.2 and 6 was dismissed by the District Judge, Thane. The Second Appeal was thereafter, stated to have been dismissed by this Court. The decree was placed in execution by the Respondent by filing Darkhast No.93 of 2001 before the Civil

Judge, Senior Division, Thane. An application was preferred by the Judgment Debtor. The Civil Judge, Senior Division decided the application and directed that a possession warrant under Order 21 Rule 25 of the Code of Civil Procedure, 1908 be issued. The order was not challenged by the Judgment Debtor.

2. The Petitioner moved an application on 13th August 2003 as an obstructionist through a Director by the name of Hirachand Tarachand Jain claiming that the Petitioner was not a party to the suit and that the decree was not binding on him. Evidence was allowed to be adduced in support of the application preferred by the obstructionist and on the part of the decree holder in opposition. The Executing Court came to the conclusion that the obstructionist was not in possession of the property and rejected the application. An appeal was filed against that order which was dismissed on 17th February 2005 by the Additional District Judge, Thane. The Court has been informed that a possession warrant was issued in favour of the Respondent by the executing Court on 18th March 2005 and possession was handed over to the Respondent on 4th April 2005. The Respondent thereupon is stated to have entered into negotiations for the sale of the property

and on 27th October 2005 a public notice was issued by the purchaser in the newspapers. The Co-operative Society issued its no objection on 15th November 2005. On 21st November 2005, stamp duty was paid and on 23rd November 2005 registration fees came to be paid. On 23rd November 2005, an agreement was entered into and possession was handed over to the transferee. On behalf of the Respondent, it has been stated on affidavit that it is thereafter on 22nd February 2006 that the Petitioner through his Advocate sent a notice to the Respondent communicating the ad-interim order dated 1st February 2006 passed by this Court in the present proceedings.

3. The Additional District Judge, has in elucidating several circumstances having a bearing on the genuineness of the claim that has been set up by the Petitioner considered that (i) the application on behalf of the Petitioner was moved by a person by the name of Hirachand Tarachand Jain who claimed to be one of the Directors of the Company. When the applicant was cross-examined, he was not able to produce any document showing that he was a director of the Company and he admitted that no information of his being a Director was furnished to the Registrar of

Companies in Form No.82 required by the Companies Act, 1956; (ii) The case of the Petitioner rested on an alleged agreement of Leave and Licence stated to have been executed on 1st August 1974. The agreement was for a period of 11 months. For reasons best known to the Petitioner, however, the agreement for Leave and Licence was not produced before the executing Court when the evidence of Hirachand Jain was recorded; (iii) The documents which were produced at Exhs.60, 61, 62 and 63 related to the period 1976 and 1977. Similarly, a letter of the MSEB that was relied upon was of March 1978. No electricity bills were forthcoming to establish the presence of the Petitioner in the suit premises thereafter; (iv) One J.R. Punamiya was found to be the sole proprietor of Sandeep Plastics Pvt. Ltd. as well as Rupchand Tarachand Company. The aforesaid J. R. Punamiya is also stated to be a Director of the Petitioner herein. All the Directors are closely related. It was, therefore, apparent that J.R. Punamiya who is a Director of the Petitioner-Company was aware of all the facts of the litigation. In these circumstances, the Appellate Court concurred with the judgment of the executing Court.

4. On behalf of the Petitioner, it has been submitted that

while the Leave and Licence agreement was not produced before the executing Court nor the electricity bills were produced, an application was moved under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence for taking the documents on record. The application under Order 41 Rule 27 was dismissed. There is no satisfactory explanation as to why these documents, if they were in the custody of the Petitioner, were not forthcoming when evidence was adduced before the executing Court. The bald explanation that the documents were handed over to the Advocate who however did not produce them on the record cannot be accepted.

5. In sum and substance, the reasons given by the two Courts below do not suffer from any error apparent. The Petitioner has failed to establish any independent right, title or interest. In any event, though the Petition was lodged in 2005, it is only on 1st February 2006 that this Court, upon being moved, issued notice and passed an ad-interim order. In the meantime, third party rights have been created. No case for interference under Article 227 is made out.

6. The petition is dismissed.

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